IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.871 OF 2000

1. Ramkaran Dukhi Yadav]
2. Ramavatar Dukhi Yadav]
3. Mussafir Banzil Harijan]
4. Rajaram Basaram Patel]
All Indian Inhabitants]
of Mumbai, residing at]
Goregaon (E), Mumbai]
400063. (At present lodged]
as undertrial in Nasik]
Central Prison, Nasik]..Appellants
[Ori.Accused
Nos.1 to 4]

Vs.

1. The State of Maharashtra]..Respondents

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Mr.C.K.Talekar Advocate for the Appellants
Ms.S.V.Gajare, A.P.P. for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 6,2005

ORAL JUDGMENT:

1. Through this appeal, the appellants-accused nos.1 to 4 challenge the judgment and order dated 16.10.2000, passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.183 of 1989. By the said judgment and order, the learned Judge convicted all the four accused under Sections 323 r.w. 34 of IPC and sentenced them to

R.I. for one year.

2. The prosecution case briefly stated is as under:

. Chhotelal Yadav was residing along with his brother P.W.2 Munnilal Yadav at Gokuldham, Goregaon, Mumbai. On 19.11.1988, Munnilal Yadav learnt that his brother Chhotelal Yadav was being assaulted. When he went to the spot, he saw that appellants were assaulting his brother. It is the prosecution case that Chhotelal was assaulted by fist and kick blows and he was also so assaulted on his private part. Thereafter, Munnilal Yadav took his brother to hospital. Chhotelal Yadav was admitted in hospital from 19.11.1988. He came to be discharged from the hospital after few days. After he was brought back from the hospital again he was re-admitted to the hospital and on 3.12.1988, he died. On the very same day, FIR (Exh.13) came to be registered. Thereafter, investigation commenced. In due course, the charge-sheet came to be filed.

3. The charge came to be framed against the appellants-accused for the offence under Section 302 r.w. 34 of IPC. All the accused pleaded not guilty and claimed to be tried. Their defence is of total denial. After going through the evidence adduced by

the prosecution, the learned Judge has convicted and sentenced the appellants as stated in para no.1 above. Hence, this appeal.

4. I have heard Mr.Talekar, the learned advocate for the appellants and Ms.S.V.Gajare, the learned A.P.P. for the State. I have perused the judgment and order passed by the learned Judge as well record pertaining to the above matter. After carefully considering the matter, I am of the opinion that the conviction imposed on the appellants cannot be sustained and the appeal deserves to be allowed.

5. The conviction of the appellants is based on the evidence of sole eye witness P.W.2 Munnilal Yadav who is brother of deceased Chhotelal Yadav. Munnilal Yadav has stated that on the date of the incident, he was informed that his brother was being assaulted. When he rushed there, he saw accused persons were assaulting his brother.

6. In the present case, though Chhotelal Yadav was admitted in hospital, neither the papers in respect of his admission and treatment in the hospital nor the injuries sustained by him on 19.11.1988 have been brought on record. P.W.4 Dr.Powle performed post-mortem. He does not mention about any external

injuries on the body of Chhotelal Yadav. According to him, the cause of death was 'septicaemia with meningitis'. From the evidence of Dr.Powle, no external or internal injuries were noticed on the body of Chhotelal Yadav. Dr.Powle has specifically stated that no injuries were seen on the spine and spinal cord. Nothing abnormal was found in the organs of generation. Dr.Powle has further stated that 'meningitis' is a type of disease and it is because of inflammation and infection of meninges. Thus, it appears that death has not a result of the assault by the accused persons.

7. Only one eye witness is examined in the present case i.e. P.W.2 Munnilal Yadav who is brother of Chhotelal Yadav. Mr.Talekar submitted that Munnilal has not actually witnessed the incident and the story of Munnilal that his brother assaulted by the accused is an improvement. In this connection, he has pointed out the evidence of Munnilal wherein Munnilal admitted that whatever is stated by him before the Court is not recorded in his police statement. On perusal of the evidence, I find much merit in this submission. Mr.Talekar further submitted that Munnilal Yadav is an interested witness and no independent witness has been examined in the present case. Munnilal Yadav has stated that

his brother was assaulted near the well. However, the scene of offence panchnama does not mention any well near the scene of offence. The spot of incident infact was pointed out by Munnilal Yadav himself. In the said panchnama, he has pointed out the spot of incident as having occurred in the hut of accused no.2. Thus, there is a discrepancy as to where the incident actually took place. Looking to the fact that P.W.2 Munnilal Yadav has given two different places as to where the incident took place, I find that it raises some doubt in respect of veracity of this witness. As stated earlier, he is an interested witness. Looking to the above facts, I do not find it safe to rely on the testimony of this witness. None of other witnesses have actually witnessed the incident. Thus, we are left with the sole testimony of P.W.2 Munnilal Yadav. As far as this witness is concerned, I have already observed that I do not find it safe to rely on the testimony of this witness. Moreover, no motive has been brought on record for any of the accused persons to assault Chhotelal Yadav.

8. As stated earlier, Chhotelal Yadav was admitted in the hospital on 19.11.1999. Thereafter, he was discharged. Sometime thereafter, he was again admitted to the hospital and thereafter he died on

3.12.1988. No injuries have been noticed by any Doctor on the body of Chhotelal Yadav. P.W.4 Dr.Powle has specifically stated that cause of death was 'meningitis with septicaemia'. From the facts of this case, it does not appear that cause of death of Chhotelal Yadav was in any way related to the assault by any of the accused persons. As far as the aspect of assault on Chhotelal is concerned, Munnilal is the only witness and I do not find his evidence to be trustworthy. In this view of the matter, I am of the opinion that it cannot be reliably said that any of the accused persons assaulted Chhotelal Yadav.

9. In the result, the appeal is allowed. The conviction and sentence of the appellants under Section 323 r.w. 34 of IPC recorded by learned Additional Sessions Judge, Greater Mumbai dated 16th October, 2000 in Sessions Case No.183 of 1989, is set aside and the appellants are acquitted thereunder. The appellants are on bail. Their bail bonds shall stand cancelled.

10. Authenticated copy be issued to the parties.

[V.K.TAHILRAMANI,J.]